The following version is for informational purposes only

ECCOM DEVELOPMENTS LTD.

v.

ASSESSOR OF AREA 9 - VANCOUVER

Supreme Court of British Columbia (A883233) Vancouver Registry

Before MR. JUSTICE MACDONALD

Vancouver, January 19, 1989

Barry T. Gibson for the appellant
James A. S. Legh for the respondent

Reasons for Judgment January 23, 1989

This is an appeal by way of Stated Case pursuant to s. 74 (2) of the Assessment Act, R.S.B.C. 1979, c. 21, from a decision of the Assessment Appeal Board. It concerns the proper classification of a parcel of vacant land at 1415 West Georgia Street in the City of Vancouver under B.C. Regulation 438/81 which describes the classes of property into one of which a property assessed for tax purposes must fall. It is common ground that the property in question was, at the September 30, 1987 classification date applicable, either Class 1 (residential), or Class 6 (business and other).

While the correct classification will not alter market value, the significance of the issue is that a Class 6 property attracts property taxes some 150% greater than a Class 1 property of the same value. The part of the regulation in dispute reads:

> "Class 1 -- residential
>
> 1. Class 1 property shall include only:
>
> (a) land . . . used for residential purposes, . . . ;
>
> (b) improvements on land classified as a farm . . . ;
>
> (c) land having no present use and which is neither specifically zoned nor held for business, commercial . . . or industrial purposes."

Since the land in question was vacant at the classification date, and since it is not (and cannot be) classified as a farm, unless it falls within 1 (c) it must be Class 6. Clause 1 (c) requires that the land have three characteristics to be included therein. It must:

1. Have no present use. (As at the classification date, this land so qualified.)

2. It must not be held for commercial or other like purposes. (There is no issue on that aspect. The appellant had decided well before the classification date to proceed with a wholly residential development, a rezoning bylaw had passed second reading by that date and such a development is now under construction.)

3. The land must not be specifically zoned for business, commercial or industrial purposes. (It is this requirement which is in issue.)

The word "specifically" is the one which creates the problem. If that word were not present in the regulation, this case would not have arisen. The difficulty arises due to the form of zoning which the City of Vancouver has adopted for what its zoning bylaw describes as the Downtown District. In summary, almost any use of land (except perhaps farming and heavy industry) is permitted in the Downtown District, provided the owner obtains the approval of the Development Permit Board.

The appellant argues that such zoning is general rather than specific in nature; that the word "specifically" in the regulation must be restrictive, otherwise it would be superfluous, and a meaning must be attributed to each word; that the word should be read in such a way to cause regulation 1 (c) to read ". . . zoned for purposes other than residential".

The assessor, on the other hand, submits that what is important in the zoning is what uses are permitted, and that here the Downtown District "specifically" allows business, commercial and industrial as well as residential uses. The Assessment Appeal Board accepted that argument in these words:

". . . the lands potentially have a number of uses, all of which are permitted by the present zoning . . . The word 'specific' tends to the meaning of definite as opposed to implied or indefinite and the possible land uses, namely, commercial, business or industrial are specific items of zoning."

I agree with that view of the proper interpretation of clause 1 (c) of the regulation.

The consequences of holding otherwise must be considered. This decision will apply to all vacant land in the Downtown District and the opposite conclusion would invite a rash of less than serious rezoning applications and residential development proposals in an effort to establish that those lands are not ". . . held for business, commercial or industrial purposes." That result is to be avoided if, on the plain meaning of the words in the regulation, it is open to do so.

I agree with the suggestion of the appellant that it is most unlikely that the regulation contemplated the type of general, Permit-required, zoning which is now in place in Vancouver's Downtown District. In the past, land was zoned for one type of use or another; agricultural or residential or commercial or industrial, etc. It was "specifically zoned" for one particular use or class of uses. However, I have no difficulty here in finding that the land in question was "specifically zoned for . . . business . . . purposes" on the classification date and thus not within clause 1 (c) of the regulations, even though development for any use could not proceed without the approval of the Development Permit Board.

JUDGMENT

Both questions in the Stated Case are answered in the negative. I find no error in law on the part of the Assessment Appeal Board. The respondent is entitled to his costs of this Stated Case.